

EXHIBIT G
TO THE DECLARATION OF JOSEPH V. WILLEY

**N.Y. EDUC. DEP'T, SUPPLEMENT #1 – PROVISION
OF SERVICES TO STUDENTS WITH DISABILITIES
DURING STATEWIDE SCHOOL CLOSURES DUE TO
NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN
NEW YORK STATE – ADDITIONAL QUESTIONS
AND ANSWERS (Apr. 27, 2020)**



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April 27, 2020

TO: School District Superintendents
School Principals
BOCES District Superintendents
School District Business Officers
Charter School Leaders
Special Education Directors
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education Chairpersons of Committees on Preschool Special Education
Administrators of Nonpublic Schools with Approved Special Education Programs
Organizations, Parents and Individuals Concerned with Special Education
Preschool Providers of Special Education Programs and Services
Superintendents, Special Act School Districts
Superintendents, State-Operated Schools
Superintendents, State-Supported Schools

FROM: Christopher Suriano, Office of Special Education

SUBJECT: Supplement #1 - Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus (COVID-19) Outbreak in New York State – Additional Questions and Answers (April 27, 2020)

The New York State Education Department recognizes the unprecedented challenges school districts face in ensuring students with disabilities receive a free appropriate public education (FAPE) during this extreme health and safety crisis. As Statewide school closures continue during the Coronavirus outbreak, the Department remains committed to providing ongoing, updated guidance to parents, families, and school district staff on the provision of services to students with disabilities. This memorandum is a supplement to the March 27, 2020 guidance on the [Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus \(COVID-19\) Outbreak in New York State and Question and Answer Document](#).

During school closures due to the Coronavirus outbreak, students with disabilities, including English language learners with disabilities, must be provided continuity of learning and, to the greatest extent possible, the special education and related services

identified in the student's individualized education program (IEP). While special education programs and services will not be able to be provided in the same manner during school closures, school districts and approved programs serving students with disabilities must collaborate with parents and families to ensure that students continue to be provided FAPE consistent with the need to protect the health and safety of students and their service providers.

The Department's Office of Special Education will continue to provide updated guidance to the field. We also recommend that you frequently check the [NYS Department of Health \(DOH\) Novel Coronavirus webpage](#) and [NYSED's COVID-19 website for updates](#).

Attachment: Supplement #1 - Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus (COVID-19) Outbreak in New York State (April 27, 2020)

ATTACHMENT

**SUPPLEMENT #1 - PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES
DURING STATEWIDE SCHOOL CLOSURES DUE TO
NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN NEW YORK STATE**

Questions and Answers April 27, 2020

The following is a continuation and supplement to the questions and answers numbered 1-21 contained in the March 27, 2020 guidance on the [Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus \(COVID-19\) Outbreak in New York State and Question and Answer Document](#).

Evaluation, Reevaluation, and Annual Review:

22. If a student was referred for an initial evaluation prior to school closure or is referred during school closure, must the school district move forward with the evaluation?

Yes. Consistent with the Individuals with Disabilities Education Act (IDEA), section 200.4(b)(1) of the Regulations of the Commissioner of Education, school districts are still required to complete an initial evaluation within 60 days of receiving parental consent for students that are referred prior to and during school closure periods. However, during this national emergency, U.S. Department of Education (USDE) has encouraged school districts to work with parents to reach mutually agreeable extensions of time, as appropriate. School districts should also consider ways to use distance technology, including the use of telepractice to meet timelines. Any delay in meeting timelines due to the ordered school closure must be documented appropriately and communicated to parents in their preferred language or mode of communication.

23. Can procedures, tests or assessments conducted as part of an initial evaluation or reevaluation be conducted remotely?

Yes. However, the determination as to whether a specific evaluation may be conducted remotely for a particular student must be made on a case-by-case basis.

As indicated in Question #7 of the March 27, 2020 guidance, and in accordance with guidance provided by the Office for Civil Rights in [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#), if an evaluation, including a bilingual evaluation, requires a face-to-face in-person assessment or observation, the evaluation would need to be delayed until school reopens. Evaluations and re-evaluations that do not require face-to-face in-person assessments or observations may take place while schools are closed, so long as a student's parent consents.

In order to proceed with remote evaluations, the certified or licensed professionals who will be conducting an evaluation must determine whether they are able to perform their component of the evaluation remotely, including via telepractice, in accordance with the applicable professional practice guidance and consistent with privacy requirements. Additionally, assessment administration guides should be consulted by the certified or licensed professional to determine if administration of the assessment remotely allows for valid results. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the method of test administration) must be included in the evaluation report. When evaluating students who are physically distant, evaluators who are licensed must use the same standards that apply to face-to-face in-person practice and adhere to the ethics standards and standards of practice as well as the laws, rules and regulations, governing their profession in New York State. Relevant guidance on telepractice is available on the NYSED Office of the Professions webpage (see [NYS Professions with Telepractice Guidance](#)). As with any evaluation, Committees must determine whether the evaluation information provides sufficient information, or whether further information is required, to determine eligibility and identify all the student's special education needs.

24. Can a remote observation of the student while he/she is receiving continuity of learning at home be conducted?

Section 200.4(b)(1)(iv) of the Regulations of the Commissioner of Education requires an initial individual evaluation to include an observation of the student in the student's learning environment or, in the case of a student of less than school-age or out of school, an environment appropriate for a student of that age. Since most students in New York State, during the COVID-19 school closures, are receiving continuity of learning while they are home, a remote observation of the student receiving instruction in this temporary learning environment could be conducted as part of an initial individual evaluation. The determination as to whether an observation of the student can be conducted remotely while the student is in his/her home due to the COVID-19 school closures, must be made on a case-by-case basis with parent consent.

25. Are school districts required to conduct three-year reevaluations during school closures?

A reevaluation of each student with a disability must be conducted at least every three years, unless the parents and school district agree that a reevaluation is unnecessary (see also Question #7 in the March 27, 2020 guidance). USDE has encouraged school districts to work with parents to reach mutually agreeable extensions of time, as appropriate. School districts should also consider ways to use technology to meet timelines by conducting reevaluations remotely. Any delay in meeting timelines must be documented appropriately and communicated to parents in their preferred language or mode of communication. As appropriate, a

reevaluation may also be conducted by reviewing existing evaluation data. This review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed.

26. Are school districts required to conduct annual reviews during school closures?

Yes. Annual reviews must be conducted at least annually by the Committee to evaluate the status of each student with a disability who resides within the school district. As indicated in Question #7 of the March 27, 2020 guidance, Committees would not be required to meet in person while schools are closed. When conducting Committee meetings, the parent of a student with a disability and a school district may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.

Provision of Services:

27. During school closures, is there any flexibility regarding the provision of services on IEPs (e.g., group or individual sessions; specific group size for related services, frequency, duration and location of related services, special class size ratio, etc.)?

Yes. As indicated in Question #1 of the March 27, 2020 guidance, school districts must ensure that, to the greatest extent possible, each student with a disability is provided the special education and related services identified in the student's IEP but that during this emergency, schools may not be able to provide all services in the same manner they are typically provided. Making every effort possible now to provide required special education programs and services is the most effective way to mitigate the need to provide compensatory services in the future. It is also very important for school personnel and parents to work collaboratively and creatively during the period schools are closed. This will help to ensure there is an understanding of the school's efforts to provide services consistent with the recommendations on the IEP and monitor student progress. Schools must communicate with parents in their preferred language or mode of communication and should document their outreach efforts. Documentation must be maintained on the instruction and services that were provided to each student so that these activities may be communicated to the Committee on Special Education or Committee on Preschool Special Education (hereinafter referred to as Committee) for consideration when making an individualized determination as to whether and to what extent compensatory services may be needed when schools reopen.

28. If a student is initially found eligible during the Statewide closure of schools, should the IEP be written based on the options that will be available for service with continuity of learning plans that districts were required to develop, or should the IEP be written based on what the Committee would have

recommended to provide a student FAPE if schools were in operation as normal?

An IEP must be developed to ensure the provision of FAPE and should not be written to accommodate a temporary situation. Therefore, Committees should be developing an IEP for a student that is initially found eligible based on what the student will need once the school reopens. However, as indicated in Question A-5 of USDE's [Questions and Answers On Providing Services To Children With Disabilities During The Coronavirus Disease 2019 Outbreak - March 2020](#), a Committee may also create a contingency distance learning plan for such student that could be implemented during closure due to COVID-19. Such contingency plan may include the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities. Creating a contingency plan gives the student's service providers and parents an opportunity to reach agreement as to what services will be provided during the school closure. Such plan should be clearly identified as time limited.

29. Can special education programs and related services be provided after hours and on the weekend via telepractice during the period of time schools are closed due to COVID-19?

The provision of programs and related services should adhere to the regular school day as much as possible; however when that is not possible, based on individual circumstances, a school may need to consider providing services during alternate times and days that are mutually agreed upon with the parents in order to accommodate students, parents, school and service delivery personnel.

Continuity of Learning:

30. Who is responsible for ensuring continuity of learning and special education services are provided to students with disabilities placed in out-of-district programs (e.g. contracts with other districts for special services or programs, boards of cooperative educational services (BOCES), nonpublic schools with an approved special education program, State-supported schools, State-operated schools, Special Act school districts, out-of-State nonpublic schools with an approved special education program) during school closures?

Students with disabilities educated in out-of-district schools and programs must have equal access to the same educational opportunities provided to all students in the district during a school closure. Therefore, each school district of residence must ensure continuity of learning and special education services are provided to students with disabilities by their out-of-district placement. Each BOCES program, in-state/out-of-state nonpublic school with an approved special education program, Special Act school district, State-supported school, State-operated school, and out-of-district school or program has an ongoing obligation to continue to provide education to enrolled students and is responsible for providing continuity of learning

and, to the greatest extent possible, the special education and related services identified in its enrolled students' IEPs during school closure.

Ongoing communication must be maintained between the school district and each BOCES, nonpublic school with an approved special education program, State-supported school, State-operated school, Special Act school district, and other contracting school districts where one or more of their students with disabilities attends during school closures, to collaborate on planned activities for the nature and delivery of instruction and related services to be provided during school closures and to identify shared resources, materials, and technology that may be available to students as appropriate.

Continuity of learning and related services provided to each student during the period of time schools are closed must be documented by the student's contracting school district, BOCES program, nonpublic school with an approved special education program, Special Act school district, State-operated, or State-supported school, as applicable, so that these activities may be communicated to the school district responsible for developing the student's IEP for consideration when making an individualized determination as to whether compensatory services are needed under applicable standards and requirements, including to make up for any skills that may have been lost, once schools reopen.

31. Who is responsible for ensuring continuity of learning and special education services are provided to preschool students with disabilities?

Preschool students with disabilities must have equal access to the same educational opportunities provided to all students in the district during a school closure. Therefore, the school district must ensure continuity of learning and special education services are provided to preschool students with disabilities by their approved program or service provider. Each preschool special class program, special class in an integrated setting program (SCIS), special education itinerant services (SEIS) providers, and related service provider has an ongoing obligation to continue to provide education to students and is responsible for continuity of learning, and to the greatest extent possible, the special education and/or related services identified in preschool students' IEPs.

Ongoing communication must be maintained between the school district and the approved preschool programs and itinerant service providers, to collaborate on planned activities for the nature and delivery of instruction and related services to be provided during school closures, and to identify shared resources, materials, and technology that may be available for students as appropriate.

Continuity of learning and related services provided to each student during the period of time schools are closed must be documented by the student's approved preschool special education program or provider, as applicable, so that these activities may be communicated to the school district responsible for developing the student's IEP for consideration when making an individualized determination as to

whether compensatory services are needed under applicable standards and requirements, including to make up for any skills that may have been lost, once schools reopen.

32. If a nonpublic school with an approved special education program, Special Act school district, State-supported school, State-operated school, preschool special class, or preschool SCIS program submitted closure notification to NYSED and also notified the students' county and school district of residence, as applicable, must they submit new closure notification to NYSED and to school districts/counties for school closures occurring as a result of a Governor Executive Order?

No, a second notification is not required. Those programs licensed by the Office of Children and Family Services and New York City Department of Health and Mental Hygiene also follow closure notification requirements applicable to those agencies.

180-Day Waiver:

33. How is the 180-day waiver applicable to nonpublic schools with approved special education programs, Special Act school districts, State-supported schools, State-operated schools, preschool special class, and preschool SCIS programs?

Please refer to this clarification on 180 day requirements in light of [Executive Orders](#). As noted in this clarification, the same waiver rules shall apply to the requirement under Commissioner's Regulations 200.7(b)(5) and 200.20(a)(6) to operate for not less than 180 days during the 10-month school year for nonpublic chapter 853 schools, Special Act School Districts, State-supported 4201 schools, the two State-operated schools, and approved preschool special class and SCIS programs.

34. If a nonpublic school with an approved special education program, Special Act school district, State-supported school, State-operated school, preschool special class, or preschool SCIS programs closed prior to March 18, 2020, are those days included in the 180-day waiver?

Pursuant to Executive Orders 202.1 and 202.2, any day that a public school district (including Special Act School Districts) or charter school had been previously scheduled to be open but was closed prior to March 18, 2020 at the direction of state or local health officials as a result of the COVID-19 virus, or pursuant to a properly executed declaration of an emergency for the COVID-19 crisis, will satisfy the requirements for a waiver of the usually required reduction in monies payable to school districts and charter schools under Education Law section 3604, **provided that such school district or charter school has exhausted any available time, including snow days and vacation days**. The same waiver rules shall apply to the requirement under Commissioner's Regulations 200.7(b)(5) and 200.20(a)(6) to

operate for not less than 180-days during the 10-month school year for nonpublic chapter 853 schools, Special Act School Districts, State- supported 4201 schools, the two State-operated schools, and approved preschool special class and SCIS programs. Please refer to this clarification on 180-day requirements in light of [Executive Orders](#).

35. If a nonpublic school with an approved special education program, Special Act School district, State-supported school, State-operated school, preschool special class, or preschool SCIS program remains closed due to COVID-19 after May 15, 2020, are they eligible for the 180-day waiver?

Pursuant to Executive Orders 202.11, 202.14 and 202.18, the 180-day waiver will not be granted if the school closure extends beyond May 15, 2020 unless otherwise directed by the Governor. Please refer to this clarification on 180-day requirements in light of [Executive Orders](#).

36. If a preschool special class or preschool SCIS is licensed by either Office of Children and Family Services (OCFS) or the New York City Department of Health and Mental Hygiene (DOHMH) and closed pursuant to a recommendation or allowance issued by those agencies, are they eligible for the 180-day waiver?

Preschool special class and SCIS programs that close in accordance with a recommendation or allowance contained in OCFS or DOHMH issued guidance are eligible for the 180-day waiver to the same extent as it applies to the other NYSED approved programs serving students with disabilities. Please refer to this clarification on 180-day requirements in light of [Executive Orders](#).

37. If a nonpublic school with an approved special education program, Special Act school district, State-supported school, State-operated school, preschool special class, or preschool SCIS program takes spring break during the period of time schools are closed pursuant to Governor Executive Order, are they eligible for the 180-day-waiver?

Please refer to this clarification on 180-day requirements in light of [Executive Orders](#). As noted in this clarification, pursuant to Executive Orders 202.11, 202.14 and 202.18, any day that a public school district (including Special Act School Districts) or charter school had been previously scheduled to be open but is closed during the period of April 1, 2020 through May 15, 2020 will satisfy the requirements for a waiver of the usually required reduction in monies payable to public school districts and charter schools under Education Law section 3604, **provided that such school district or charter school has exhausted and/or will exhaust any available time, including snow days and vacation days**. Such waiver shall not be granted if such closure extends beyond May 15, 2020, unless otherwise directed by the Governor. As noted in this clarification, the same waiver rules shall apply to the requirement

under Commissioner's Regulations 200.7(b)(5) and 200.20(a)(6) to operate for not less than 180-days during the 10-month school year for nonpublic chapter 853 schools, Special Act School Districts, State-supported 4201 schools, the two State-operated schools, and approved preschool special class and SCIS programs.

38. What resources are available for schools and parents on the provision of continuity of learning during Statewide school closures due to the COVID-19 outbreak?

In addition to the assistive technology resources provided in Question #2 of the [March 27, 2020 guidance](#), NYSED has identified the following additional resources to assist school districts and parents in meeting the needs of students with disabilities during school closures due to the COVID-19 outbreak. This list will be updated as additional resources are identified. These resources are for informational purposes only. The views expressed herein do not necessarily represent the positions or policies of NYSED. No official endorsement by NYSED of any product, commodity, service or enterprise mentioned on the following websites is intended or should be inferred.

Resources to Support Continuity of Learning for Students with Disabilities

- [**New York State Education Department \(NYSED\)**](#): NYSED's [Continuity of Learning webpage](#) provides information, guidance, and resources to assist local decision-making around instructional decisions, methods, tools, curriculum, and resources utilized to support continuity of learning in the midst of long-term school closures due to emergency situations, such as COVID-19.
- [**National Center for Systemic Improvement \(NCSI\)**](#) USDE has designated NCSI as a resource hub on information related to the Coronavirus. NYSED encourages educators and administrators to refer to the [padlet site](#) NCSI has specifically created to share instructional resources and service delivery solutions. NCSI anticipates continually adding resources and content to support remote special education learning options.
- [**Early Childhood Technical Assistance Center \(ECTA\)**](#): The ECTA Center, funded by OSEP, has also been designated by USDE as a resource hub on information related to the Coronavirus. The ECTA website includes the latest on [COVID-19](#) and [Tele-Intervention and Distance Learning](#), and review recent [webinars](#) on these topics.
- [**Center on Online Learning and Students with Disabilities**](#): Funded by OSEP, the Center on Online Learning provides resources for online learning that can be made more accessible, engaging, and effective for K-12 students with disabilities. The Center also identifies promising practices for K-12 children with disabilities by

investigating approaches that address variations in student learning styles within the range of online learning options.

- **National Deaf Center:** The National Deaf Center is a technical assistance and dissemination center federally funded by OSEP and the Rehabilitation Services Administration (RSA) to provide evidence-based strategies at the local, state, and national levels. The [COVID-19 Information webpage](#) includes updates and information, news and tips, and additional resources. The site will be updated frequently.
- **National Center on Deaf-Blindness:** The National Center on Deaf-Blindness is a part of a network of projects for children and youth with deaf-blindness (birth through 21) funded by USDE. The Center has [resources for providing technical assistance during the COVID-19 pandemic](#) and [ideas for activities at home during the COVID-19 pandemic](#). The Center's [Literacy for Children with Combined Vision and Hearing Loss webpage](#) contains information and resources for teachers, family members and related services providers interested in beginning or enhancing literacy instruction for children who have combined vision and hearing loss.

Supports for Families

- **Center for Parent information and Resources (CIPR):** CIPR, funded by OSEP, is the central “Hub” of information and products created for the nationwide network of Parent Centers serving families of children with disabilities. CIPR has created a [brief list](#) of resources to address key issues COVID-19 materials in other languages, schooling at home, telecommuting technology and tips, coping tips and other useful information. The list will be continually updated.
- **National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS):** The National Technical Assistance Center on PBIS, funded by OSEP and the Office of Elementary and Secondary Education, has shared [resources](#) to support students during the pandemic. [Supporting Families with PBIS at Home](#) provides information for families on setting routines, expectations and supporting mental wellness. [Getting Back to School after Disruptions](#) provides information for school teams and families to help students transition back to the school environment.
- **National Center for Pyramid Model Innovations (NCPMI):** NCPMI is funded by the OSEP to improve and support the capacity of state systems and local programs to implement an early childhood multi-tiered system of support to improve the social, emotional, and behavioral outcomes of young children with, and at risk for, developmental disabilities or delays. NCPMI's [Emergencies and National Disasters: Helping Children and Families Cope webpage](#) includes resources to support families in helping young children cope with the challenges that might

occur during stressful emergency or disaster situations. This website will be updated as more resources are obtained.

- **Autism Focused Intervention Resources and Modules (AFIRM)**: AFIRM is an extension of the National Professional Development Center on Autism Spectrum Disorder, funded through OSEP to promote the use of evidence-based practices for children and youth with Autism Spectrum Disorders, birth to 22 years of age. AFIRM's Supporting Individuals with Autism through Difficult Times includes seven support strategies for caregivers designed to meet the unique needs of individuals with autism during the Coronavirus outbreak.

Transition Resources

- **National Technical Assistance Center on Transition (NTACT)**: NTACT, a Technical Assistance and Dissemination project funded by OSEP and USDE's Rehabilitation Services Administration, has assembled resources to support the provision of meaningful transition services during the COVID-19 pandemic. NTACT provides Toolkits and Quick Guides, as well as resources from partner centers and organizations which provide information on transition assessment and activities for developing independent living skills, preparing for post-secondary education and training as well as exploring careers. NTACT hosted a Providing Transition-Focused Activities Online and At Home webinar on March 24, 2020 focused on sharing resources with practitioners and families, desiring to provide meaningful transition services during the COVID-19 crisis.
- **CareerZone**: CareerZone is a no-cost online career exploration and planning tool developed by the New York State Department of Labor. It offers career and education information on thousands of careers, as well as, self-assessment and career planning tools. Career Zone is appropriate for users from middle school through adult. Using this site, students can explore careers related to their strengths, skills and talents. Students can create a free online portfolio that provides a series of activities and assessments. As students work through the portfolio, their career plans are being created and can be downloaded and saved.
- **Explore-Work.com**: The Workforce Innovation Technical Assistance Center, Employment Resources, Inc., the University of Wisconsin-Madison, and the University of Wisconsin-Stout Vocational Rehabilitation Institute launched Explore-Work.com, a series of web-based modules for students with disabilities specific to the five required Workforce Innovation Opportunity Act pre-employment transition service activities.